

# COMPLETING THE WORK OF THE SENATE

Mr. LEAHY. Mr. President, I see my good friend, the deputy majority leader, the senior Senator from Nevada, in the Chamber. I first note my appreciation for the kind words he has said on several occasions about our efforts in the Judiciary Committee. The Senator and I have been friends from the day he came to the Senate. I value that friendship very much.

I also thank our leadership for having us in session today. Let me take a couple moments to say why.

This is a trying time for everybody—for our staffs, for the brave men and women of the Capitol Police, who protect us, for Dr. Eisold, and all those who work with him in the Capitol physician's office—for everybody, whether they are doorkeepers, or anybody else, including the young pages, both the Democratic and Republican pages who are here. The work is being done. It has been a difficult time.

What would have been more difficult for the Nation would have been if we had not been here today. I think it was essential we be here. We have actually accomplished a great deal by being here.

We have held hearings on judges, and voted a number out of committee, as well as a number of U.S. attorneys. We have completed action on an agreement on the counterterrorism bill. It is something that just a few days ago everybody said could not be done. We have done it. We are now at the point simply of drafting, which is not the easiest thing in the world with all the offices closed down. But the staffs of the various committees, including the Judiciary Committee, of course, have been working literally around the clock to get the paperwork done, to get the actual words on paper.

So I feel safe in predicting the House and the Senate will vote on a package on the counterterrorism bill that, interestingly enough, will be improved over what we passed in the Senate and improved over what they passed in the other body.

The sum is greater than the parts. And that shows what happens when we work together—both bodies; both parties—to get something done.

We have actually done the administration a favor by taking time to look at it. The piece of legislation originally proposed by the White House and Attorney General was deeply flawed. Had we accepted their proposal to immediately move forward and pass it, we would have given them a flawed bill which, in the long run, would have hurt their chances to fight terrorism.

The distinguished Presiding Officer, the Senator from Minnesota, was one of those who cautioned and counseled both me and others to go slowly, look at what is here, and make sure we do it right.

The distinguished Senator from Minnesota, as he always does, offered wise counsel. The distinguished Senator

from Nevada, Mr. REID, stood in this Chamber a number of times and said: We want to get it done right. I believe we have.

But lastly, it is important, as a symbol, that we be in session. I feel deeply privileged to be a Member of the Senate. I remember the first day I walked in this Senate Chamber as a Senator-elect. I was a 34-year-old prosecutor from Vermont. I had never been on the floor of the Senate. It was a lameduck session after the elections at the time. We were going to go into the new session, which is when I would be sworn in.

I came in as a Senator-elect. I thought to myself: What a thrill, coming in this Chamber and seeing people, giants of the Senate—in fact, two predecessors from the Presiding Officer's home State: Hubert Humphrey and Fritz Mondale. And I have thought it a privilege every day I have walked in this Chamber, every day I have come to this building.

I have no idea how long I will be a Senator—none of us do—but I know every single day that I am, I will consider it a day that is a great privilege.

And this building, this symbol of democracy, which will be here long after all 100 of us are gone—and I hope for hundreds and hundreds more it will be here—should be open. It should be open. It should tell not just a quarter of a billion Americans that this is the seat of democracy but tell billions of people around the world, especially those who come from countries that are anything but democracies, this symbol stands, this symbol shines, this symbol is open for business.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## JUDICIAL NOMINATIONS

Mr. REID. Mr. President, I want to go over a few facts regarding judicial nominations because that has been the subject of some discussion in this Chamber.

I, first, say that today there was a hearing held down in S-128, the appropriations room. It was held in spite of all that is going on around here. I want to tell Senator LEAHY how much I appreciate that, and also Senator SCHUMER, who chaired the subcommittee.

I say that because Senator ENSIGN nominated Larry Hicks. He did it. And I appreciate very much JOHN ENSIGN allowing me to approve of his nomination.

JOHN has been very good about that. Every fourth nomination I get. He told me if there is somebody I really don't like, he said, yes, he wouldn't put them

forward. But the first person he put forward is a man by the name of Larry Hicks, eminently qualified, a good lawyer and a good person. It would have been a terrible shame for him and his family to have traveled back here yesterday to be told the hearing has been canceled, the Senate is not in session. So they were able to go into that crowded room and proudly be there when their husband, their father, their brother was given this most important hearing that will make him a Federal judge. He is extremely well qualified.

I wish to tell the Senator from Vermont how much I personally appreciate that. He is chairman of the committee. He is the one who arranged that. He is a member of the Appropriations Committee, one of the senior members. That is why we were able to use S-128.

Not only did he hold the hearing in S-128, but there was an emergency meeting held today to mark up people who had had hearings previously. Thirteen U.S. attorneys were reported out of the Judiciary Committee today, including a person who is going to be an assistant Attorney General, Jay Bybee from Nevada, a person also very well qualified, a professor at the University of Nevada Law School.

In addition to the U.S. attorneys and the Assistant Attorney General, we have four district court judges who were reported out of committee. Right back here it was done. It was difficult to get a quorum. People were pulled off the floor to do that. The Senator from Vermont, chairman of the committee, did that. There was a judge from Oklahoma, a judge from Kentucky, a judge from Nebraska, and a judge from Oklahoma—four district court judges.

In S-128 today, there was not a single member of the minority at that committee hearing—not a single one. The makeup of the committee was Senator SCHUMER, Senator LEAHY, and Senator KENNEDY. I may be missing someone but they were all Democrats. So I say to my friends, if these judicial nominations are that important, couldn't they attend a hearing? Remember, these were all Republican nominations—not a single Democratic nomination, all Republicans.

Let me also say this to boast—it is a pure, unadulterated boast; I am bragging about Chairman PAT LEAHY—confirmations under Chairman LEAHY have been faster than in the other first years. Fair comparisons show that by October 15 of the first year of President Clinton's administration, the Senate had only confirmed four judges, four fewer than by the same time this year. By October 15 of the first year of the first Bush administration, the number was the same; only four judges had been confirmed. This year, 2001, in the fewer than 4 months since the reorganization of the Senate, when we had Chairman LEAHY of the Judiciary Committee, and we had to spend some time organizing, too—you don't just hit the ground running—twice as many judges

have been confirmed as during the first 9 months of the first Bush administration and the Clinton administration. Remember, 4 months.

Chairman LEAHY and the Senate are ahead of the confirmation pace for judicial nominations for the first year of the Bush administration and the first year of the Clinton administration.

Since July of this year, the Senate has already confirmed four court of appeals judges and a fifth has already had a hearing and is being scheduled for committee consideration as soon as the followup questions are answered. That judge would have been reported out today had the questions been answered of one of the Senators, I believe from Wisconsin. Senator FEINGOLD had some questions that had not been answered. Because of that and Senate tradition, you can't report out nominations if questions of members of the committee have not been answered.

In 1989, five court of appeals judges were confirmed for the entire year. We are on a pace to confirm between six and eight this year.

Chairman LEAHY has already held six hearings involving judicial nominees since July 10, including two in July and two unprecedented hearings during the August recess. Most of us were out doing other things. I am not afraid to acknowledge, I took a vacation for several weeks in August. When PAT LEAHY was here holding hearings, I was vacationing. Unprecedented hearings, two hearings during August, a hearing in September in the aftermath of the September 11 terrorist attack, a hearing on October 4, and, of course, the hearing today about which I have talked.

By contrast, in the 6½ years the Republicans chaired the Judiciary Committee from 1995 to 2001, in 34 months, they held no confirmation hearings for judicial nominations, 34 months. In 30 months, they held a single confirmation hearing. And in only 12 months did they hold at least two hearings involving judicial nominees.

You can bring charts on the floor, as was done earlier saying, Senator LEAHY, when he holds a hearing, doesn't do as many as we did. As I have said, I am happy to play this statistics game. I am happy to do that. Anyone who wants to do that, I can do it. As everyone knows, you can do whatever you want with statistics. But I am giving the Senate the statistics. Let someone come and disagree if they want. I am telling you this will be on the record of the Senate forever.

If the Senate adjourns, let's say, by the Thanksgiving recess, which probably will be the case, as it did in 1989 and 1993, Chairman LEAHY intends to hold additional hearings for judicial nominees. That would bring the total of the year to maybe as many as 10 hearings. The Senate could be in a position to confirm between 25 and 30 judges in this very short session during which the chairman of the Judiciary Committee took over this summer.

During the entire first year of the Clinton administration, the Judiciary

Committee held only six hearings. During the entire first year of the first Bush administration, the committee held seven hearings.

Chairman LEAHY will hold as many as 10, even though he has not had the whole year. I remind everybody, during the first 6 months of this year, not a single confirmation hearing was held and not a single confirmation took place. Those are the facts.

The comparisons of the minority are simply unfair. Chairman LEAHY and the Democratic Senate have been criticized for only having confirmed eight judicial nominations so far this year. That number has been compared to totals from the end of previous years: In 1989, 15 judges were confirmed; in 1993, 27. This year's number was achieved between July 10 and October 15, and it is still growing. The totals against which it is being compared counts confirmations through late November in both years.

Now, as a result of the "unprecedented"—I use the word again—hearing in the President's room, we are going to, on Tuesday or Wednesday, vote out four more judges or several more judges. I think it is four. We are going to do these U.S. attorneys. We are going to do Mr. Bybee.

Mr. LEAHY. Mr. President, if the Senator will yield.

Mr. REID. Mr. President, I didn't know Senator LEAHY was here. I am glad to see the chairman.

Mr. LEAHY. I don't always enjoy the statements I hear on the floor, but I must admit, I was relishing this one.

Mr. REID. If I had known you were here, I would have been more effusive.

Mr. LEAHY. I think it was bad enough. But if my wife is watching this, she is going to wonder who this person is and who is coming home tonight with all these nice things you have said about me. I thank the Senator from Nevada who has helped make it possible.

He and Senator DASCHLE helped us get the rooms under difficult circumstances so we could have this hearing. I had the markup this morning, where we sent out, between judges and U.S. attorneys, about 18 people, virtually all of whom were there on the recommendation of Republican Senators. Because of his help, we were able to get a hearing room for this afternoon.

The point the Senator made was a good point. He mentioned the judicial nominee for Nevada. He traveled 3,000 miles to be here for a hearing, assuming, of course, we were going to have the hearing today. Those plans came before the anthrax scare and, all of a sudden, everything shut down. The Senator from Nevada, in his usual way, where he worries about everybody, it seems, came to me and said: People came this distance; can we do something to help them out? Of course, we can. We have been trying to do that to accommodate everybody.

There is one thing I find with great amusement, and that is when people

say "look at the vacancies." Well, that is right, Mr. President, there are vacancies. President Clinton nominated people for virtually all of those vacancies, and they were not even allowed to have a hearing, to say nothing about a vote.

It reminds me of when the same people blocked President Clinton's nominees from having a hearing or a vote, and now they say we have all these vacancies. That is like the kid who killed his parents. When he was brought into court, he said, "Your Honor, have mercy on me, I am an orphan."

What can we say about these vacancies? Lordy, lordy, I wish they said that last year when we had the nominees ready to go.

Having said that, I don't intend to play that kind of game. We are moving as fast as we can. I point out to Senators that we have had a few problems. The Senator from Nevada pointed out that when the Republicans controlled the Senate, they didn't hold a single hearing or confirm a single judge. They have all been done since we took over, and they are all President Bush's nominees. We have had a few things going. I wasn't given a committee until July, about 2 or 3 weeks before the August recess. That is why I had staff stay here—to hold hearings during August. We have had a couple of things going on before that committee.

I am sure nobody has forgotten what happened 5 weeks ago in this country, on September 11, with the Pentagon and the World Trade Towers. We have been drafting a massive antiterrorism bill. We were given a deeply flawed piece of legislation by the Attorney General and the White House. I have worked with them and have tried to improve it, and we have done that. So now we have something both Republicans and Democrats can support, and we are going to pass it next week. That has taken a great deal of time.

As the Senator from Nevada has pointed out several times on the floor, speaking of the various Members and staff who have worked on it, I can go home at night, but most of them stay and spend the rest of the night working on it. So a lot has been done.

My earlier reason for coming to the Chamber was to thank the Senator from Nevada, and the Senator from South Dakota, Mr. DASCHLE, for keeping us in today. We accomplished an enormous amount. We accomplished more than any piece of legislation written today, more than any nominee, more than anything we voted on: we demonstrated to the United States of America that the Senate is open for business. Senators are here doing their duty.

Again, I thank the Senator from Nevada for his long-term friendship and for his kind words.

I yield the floor.

Mr. REID. Mr. President, this says it all: The average time between nomination and confirmation for court of appeals judges this year has been approximately 100 days, which includes the

delay and reorganization of the Senate and the wait for the ABA peer reviews, which cannot begin now until after the nomination. The average length of time between nomination and confirmation of those circuit court nominees approved during President Clinton's most recent term was 343 days. That is a year—average.

Accordingly, even with all the delays caused by Republicans, this Senate is acting on court of appeals nominees, on average, 8 months faster than the Republican Senate acted on Clinton nominations during the last 4 years—when they acted at all.

More than half—56 percent—of President Clinton's court of appeals nominations in 1999–2000 were not confirmed. More than one-fifth of President Clinton's judicial nominees—68—never got a committee hearing, and certainly not a committee vote from the Republican majority. No one on the Republican side has conceded that the Republican Senate did anything wrong over the last 6 years in its handling of the judicial nominations. I guess they accept 343 days as being fairly good.

Chairman LEAHY and the majority now are ahead of the pace of the Republican Senate—it is not even a close race—and we should not be criticized for doing far better than our predecessors. Of the 31 district court nominees pending, 14 do not have completed paperwork with ABA ratings, 5 had hearings, 4 are scheduled for hearings this week—and I talked about those—and 10 or more will be included the rest of this month and next month.

Mr. President, having made this case, hopefully showing that the effort to have Senator DASCHLE change what we are doing on the floor as a result of Chairman LEAHY not doing what he is supposed to do is not going to work. Having laid this out, this is not pay-back time. We are not going to use their model. They should use it when they are trying to make apples out of oranges, but we are not going to go for that. We are going to treat the Republicans like they did not treat us. We are going to do everything we can to get every judicial nomination completed as quickly as we can. That is our responsibility, and we are going to live up to it. It would be easy to do what was done to us—that is, hold them, hold them, until the very last, and then let some go—not very many but a few. We have not done that.

We have approved scores of ambassadors. Chairman BIDEN has been exemplary. All the other committees have voted out people as quickly as they could. I had a hold on someone in the Environmental Protection Agency. I got a call from Governor Whitman. I had questions. She answered them on the phone and we did it within a day or two. It would have been easy to say, well, that is what they did to us. But we are not doing that, Mr. President. We are getting these judges out as quickly as we can.

All the screaming and yelling and saying we are not going to let the ap-

propriations bills move—they can do that. We are doing the best we can.

Someone on the other side said we are going to have some meetings. We are going to have meetings, but not on that, Mr. President. I have spoken to the majority leader, and he recognizes these appropriations bills are very important. But they are the President's bills, not our bills. If he wants these lumped into some big thing—and he is over in China now. We have the foreign operations bill being held up, and he is meeting with 21 other world leaders there, many of whom get benefits from the bill we are trying to pass. But we can't because there is a filibuster.

I practiced law. I argued cases in the Ninth Circuit. I tried lots and lots of cases. I know how important it is to have judges—good judges—as many as you can get. Justice delayed is justice denied, and we know that. We are going to do the best we can to make sure there is no justice delayed. But let's use common sense.

Why hold up these appropriations bills? It is not going to speed things up. Now we are going into the third week with a filibuster. It is wrong, and I am very sorry it is happening. But no one is going to denigrate PAT LEAHY while I still have an ounce of breath left in my body.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### BASE CLOSURES

Mr. LEVIN. Mr. President, on Tuesday, I received a letter on a very important subject that I wish to bring to the attention of my colleagues.

The House of Representatives and the Senate are currently meeting in joint conference committee on the National Defense Authorization Act for Fiscal Year 2002. This bill has many provisions that are very important to our military and to our Nation, but one of the most important of these is a provision authorizing the President to conduct a new round of base closures in 2003.

The Senate voted to support the request of the administration and of our military leaders to allow the Department of Defense, DOD, to rationalize, and where necessary reduce, their infrastructure. Allowing DOD to conduct a new round of base realignment and closures is necessary to stop wasting taxpayer money, to redirect funds to higher national security priorities, and to allow the transformation of our military. Transformation has never meant just buying new weapons.

The letter I received is signed by eight former Secretaries of Defense.

They write to tell the Congress that we must act to allow DOD to ensure our base structure supports for our forces and our war fighting plans. They warn us that forces tied up defending unneeded bases "are forces unavailable for the campaign on terrorism" and that resources devoted to unneeded facilities cannot be spent on the tools we will need to win this war.

This letter is signed by Robert McNamara, Mel Laird, Jim Schlesinger, Harold Brown, Caspar Weinberger, Frank Carlucci, Bill Perry, and our former colleague Bill Cohen. I might add that two other former Secretaries of Defense, Vice President CHENEY and our current Secretary Donald Rumsfeld, have asked the Congress for this authority on behalf of this administration.

Every living current or former Secretary of Defense is telling us it is essential that we act to reduce our excess infrastructure. The Congress should listen to the voice of experience on this matter. These are the men who have had the awesome responsibility of protecting our Nation's security and running one of the world's largest, most complex organizations. These are the men who have been in the chain of command, who have had to make life and death decisions. When they tell us we need to act, we should listen, and we should act.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OCTOBER 15, 2001.

Hon. CARL LEVIN,  
Chairman, Committee on Armed Services,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter underscores the need for the Congress to approve an additional round of base realignment and closure. While we understand the sensitivity of this effort, our support for another round is unequivocal in light of the terrorist attacks of September 11, 2001. The Defense Department must be allowed to review its existing infrastructure to ensure it is positioned to support our current and evolving force structure and our war fighting plans.

We are concerned that the reluctance to close unneeded facilities is a drag on our military forces, particularly in an era when homeland security is being discussed as never before. The forces needed to defend bases that would perhaps otherwise be closed are forces unavailable for the campaign on terrorism. Further, money spent on a redundant facility is money not spent on the latest technology we'll need to win this campaign.

We thank you for all you have done to provide for our military forces, the finest in the world. We know closing or realigning bases will be difficult, but we expect you will face many difficult decisions in the coming weeks and months. With the support of Secretary Rumsfeld, together we stand ready to assist in any we can.

Sincerely,  
William J. Perry, Casper W. Weinberger,  
James Schlesinger, Robert S. McNamara,  
William S. Cohen, Frank C. Carlucci,  
Harold Brown, Melvin Laird.